

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed January 29, 2008. Claims 1-46 were pending in the Application. In the Office Action, Claims 1-46 were rejected. Thus, Claims 1-46 remain pending in the Application. Applicant respectfully requests reconsideration and favorable action in this case.

In the Office Action, the following actions were taken or matters were raised:

SECTION 102 REJECTIONS

Claims 1-46 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication No. 2005/0125698 issued to Yeates et al. (hereinafter "Yeates"). Applicant respectfully traverses this rejection.

Of the rejected claims, Claims 1, 11, 16, 25, 31, and 37 are independent. Applicant respectfully submits that independent Claims 1, 11, 16, 25, 31, and 37, and Claims 2-10, 12-15, 17-24, 26-30, 32-36, and 38-46 that depend respectively therefrom, are patentable over Yeates. However, Applicant has elected not to address the patentability of Claims 1-46 over Yeates and instead submits that Yeates does not qualify as prior art under Section 102(e) and, therefore, no *prima facie* rejection has been made. By making this choice, Applicant does not admit the accuracy of the Examiner's remarks or reasoning or acquiesce in any way to the reasoning underlying the rejection.

Applicant conceived of the invention which is the subject of the claims of the present Application prior to December 5, 2003, the purported effective date of Yeates. In support thereof, Applicant submits the Declarations of Matthew J. Wagner (the "Wagner Declaration"), Valiuddin Ali (the "Ali Declaration") and Manuel Novoa (the "Novoa Declaration") under 37 C.F.R. §1.131, together with the exhibits thereof which evidence the conception of the invention prior to the purported effective date of Yeates and/or diligence in the completion of the invention which is the subject of the present Application from a time prior to the purported effective date of Yeates continuously up to the date of filing of the present Application. Applicant also submits herewith the declaration of James L. Baudino (the "Baudino Declaration") under 37 C.F.R. § 1.131. James L. Baudino, who is a registered patent attorney, was responsible for supervising/Preparing and filing the present Application. Applicant submits that the Wagner

Declaration alone or in combination with the Ali Declaration, the Novoa Declaration, and/or the Baudino Declaration evidences diligence in the completion of the invention which is the subject of the present Application from a time prior to the purported effective date of Yeates continuously up to the date of filing of the present Application. The above-referenced declarations and evidence submitted therewith evidence the conception of the invention prior to the purported effective date of Yeates coupled with diligence from a time before the purported effective date of Yeates and continuously up to the filing of the present Application.

As the Examiner will appreciate, the Court of Customs and Patent Appeals, predecessor court to the Federal Circuit, has held that diligence is shown when a patent attorney has a typical practice of reviewing draft patent applications in sequence based on the chronological order in which they are received. *Gould v. Schawlow*, 363 F.2d 908 (CCPA 1966). Moreover, a patent attorney is not required to drop all other work and concentrate on a particular invention. *Rines v. Morgan*, 250 F.2d 365, 369 (CCPA 1957). If the attorney has a reasonable backlog of work that is taken up in chronological order and carried out expeditiously, that is sufficient to establish diligence. *Id.* In view of these legal precedents, Applicant submits that the Baudino Declaration, alone or in combination with the Wagner Declaration, the Ali Declaration and/or the Novoa Declaration, are sufficient to demonstrate due diligence from a date prior to December 5, 2003 to the filing of the present application on February 17, 2004.

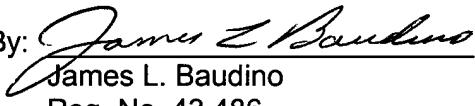
Based on these facts, Applicant respectfully requests that the rejection of Claims 1-46 based on Yeates be withdrawn.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

No fee is believed due with this Response. If, however, Applicant has overlooked the need for any fee due with this Response, the Commissioner is hereby authorized to charge any fees or credit any overpayment associated with this Response to Deposit Account No. 08-2025 of Hewlett-Packard Company.

Respectfully submitted,

By: 
James L. Baudino
Reg. No. 43,486

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Hewlett-Packard Company
Intellectual Property Administration
P. O. Box 272400
Fort Collins, CO 80527-2400
Tel. 970-898-7917